

**STATE OF OKLAHOMA
OFFICE OF PERSONNEL MANAGEMENT**

"Working for Oklahoma"

OPM 08-06

DATE: March 4, 2008

TO: All Appointing Authorities

FROM: Oscar B. Jackson, Jr., IPMA-CP, Administrator and
Cabinet Secretary of Human Resources and Administration



**SUBJECT: Public Hearing on Proposed 2008 Permanent Amendments
to Merit Rules**

A public hearing has been scheduled to allow for comments regarding the proposed 2008 permanent amendments to the Merit Rules. (Please see attachment.)

I hope that you or your representative(s) will be able to attend this hearing, details of which are as follows:

2:00 p.m.
Monday, March 17, 2008
OPM Conference Room 560 (5th Floor)
Jim Thorpe Building
2101 North Lincoln Boulevard
Oklahoma City, OK 73105

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TITLE 530. OFFICE OF PERSONNEL MANAGEMENT

CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS

530:10-3-22. Training requirements for discrimination complaints investigators

(a) Unless otherwise provided by state or federal law, all persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall ~~complete~~ be subject to the following initial training and initial certification provisions:

(1) ~~completion of~~ four days of initial discrimination complaints investigator training either conducted by the Office of Personnel Management or approved by the Administrator; and. The initial discrimination complaints investigator training shall provide participants with a current knowledge of:

(A) Oklahoma and federal equal employment opportunity laws and rules;

(B) theories of discrimination and burdens of proof;

(C) planning and conducting complete and impartial investigations;

(D) techniques for interviewing witnesses;

(E) collecting relevant evidence;

(F) documenting the record of investigation; and

(G) preparing the written report of investigation.

(2) In addition to the requirements referenced in (a)(1) of this Section a minimum of one investigation must be completed under the guidance of a senior EEO investigator, designated by the Administrator. The senior EEO investigator shall advise and support the investigator in developing competency in investigating complaints of discrimination.

(3) ~~a minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in subsection (b) of this section or section (a)(1) of OAC 530:10-3-78 each calendar year and other annual training that may be announced by the Administrator. Persons who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year. a person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.~~

(4) the Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:

(1) determines the person has completed the initial training requirements established in (a)(1) of this Section, and

(2) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.

(5) the Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.

(b) ~~Discrimination complaints investigator training shall provide participants with a current knowledge of: All persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall be subject to the following continuing education training requirements:~~

~~(1) Oklahoma and federal equal employment opportunity laws and rules; A minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in (b)(2) of this section each calendar year or other annual training that may be announced by the Administrator. Investigators who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year.~~

~~(2) theories of discrimination and burdens of proof; Discrimination complaints investigator annual training shall provide participants with a current knowledge of:~~

~~(A) Oklahoma and federal equal employment opportunity laws and rules; including the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and court cases;~~

~~(B) theories of discrimination and burdens of proof;~~

~~(C) planning and conducting complete and impartial investigations;~~

~~(D) techniques for interviewing witnesses;~~

~~(E) collecting relevant evidence;~~

~~(F) documenting the record of investigation; and~~

~~(G) preparing the written report of investigation.~~

~~(H) investigating discrimination complaints;~~

~~(I) personnel practices and procedures;~~

~~(J) alternative dispute resolution; or~~

~~(K) diversity and multi-culturalism.~~

~~(3) planning and conducting complete and impartial investigations; Discrimination complaints investigators who do not complete the annual training described in (b)(1), or who fail to report such training by January 30th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.~~

~~(4) techniques for interviewing witnesses;~~

~~(5) collecting relevant evidence;~~

~~(6) documenting the record of investigation; and~~

~~(7) preparing the written report of investigation.~~

~~(c) A person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.~~

~~(d) The Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:~~

~~(1) determines the person has completed the initial training requirements established in (a)(1) of this Section, and~~

~~(2) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.~~

~~(e) The Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.~~

~~(f) Discrimination complaints investigators who do not complete the annual training described in (a)(3), or who fail to report such training by January 15th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.~~

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATES OF PAY

530:10-7-1.2. Funding and reporting requirements

(a) Use of pay movement mechanisms involving market adjustments, lateral transfers, skill-based pay adjustments, equity-based adjustments, career progression increases, probationary increases, increases upon the completion of trial periods, and performance-based adjustments are limited to those possible using funds available in the agency's budget for the current and subsequent fiscal year without the need for additional funding. [74:840-2.17]

(b) All Appointing Authorities shall, no later than ~~January~~ August 1 of each year, report to the Office of Personnel Management a ~~projection of the cost of the~~ projection of the pay movement mechanisms listed in subsection (a) ~~to be used and anticipated costs for the remainder of during the previous~~ to be used and anticipated costs for the remainder of the previous fiscal year. [74:840-2.17]

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

530:10-15-45. Family and medical leave

(a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C, 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least **12** months and have worked at least **1,250** hours during the preceding **12**-month period.

(b) An eligible employee is entitled to family and medical leave for up to a total of **12** weeks during any **12**-month period, for the following reasons:

- (1) the birth of the employee's son or daughter, and to care for the newborn child;
- (2) the placement with the employee of a son or daughter for adoption or foster care;
- (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability; ~~and~~
- (4) a serious health condition that makes the employee unable to perform the functions of the employee's job; ~~or~~
- (5) any qualifying exigency (as defined by U.S. Department of Labor Regulations) arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

(c) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 weeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described in this paragraph, an eligible employee shall be entitled to combined total of 26 weeks of leave under paragraph (b) and (c). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (b) during any other 12-month period.

~~(d)~~ An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An Appointing Authority may require a certification issued by the health care provider of a covered servicemember being cared for by an employee.

~~(e)~~ The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the **12**-month period beginning on the date of the birth or placement.

~~(f)~~ When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section, a covered servicemember as referenced in (c) of this Section, or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. When family and medical leave is taken for a qualifying exigency as referenced in (b)(5) of this Section, leave may be taken intermittently or on a reduced leave schedule. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.

~~(g)~~ Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least **30** days before leave is to begin if the need for family and medical leave is expected. In any case in which the necessity for leave under (b)(5) of this Section is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. When the need for family and medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:

- (1) be in writing;
- (2) refer to this Section;
- (3) describe the reason for the family and medical leave;
- (4) specify the type of leave the employee is requesting to account for the time off; and
- (5) include any information or documentation required for the type of leave requested.

~~(g)(h)~~ The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

~~(h)(i)~~ Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority shall give employees the following options to account for time lost because of leave under the federal Family and Medical Leave Act of 1993.

- (1) Charge to accumulated annual leave [74:840-2.22];
- (2) Charge to accumulated sick leave [74:840-2.22];
- (3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the **Oklahoma Statutes**, which is also known as "shared leave";
- (4) Charge to accumulated compensatory time. If FMLA qualifying leave is paid with an employee's accrued compensatory time, the time shall not be charged against the employee's ~~12-week~~ FMLA entitlement [29 CFR 825.207(i)]; ~~and/or~~
- (5) Record as leave without pay in accordance with 530:10-15-47.

~~(i)(j)~~ The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

~~(i)(k)~~ Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

~~(k)(l)~~ An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

SUBCHAPTER 17. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 17. STATE WORK INCENTIVE PROGRAM

530:10-17-177. Conversion

(a) **Eligibility.** Persons employed by merit system agencies under the State Work Incentive Program shall be eligible for conversion to permanent classified status at the discretion of the Appointing Authority if the employee has:

- (1) completed **2** years of continuous participation in the State Work Incentive Program, not including periods of leave without pay in accordance with 530:10-17-175;
- (2) performed satisfactorily as evidenced by performance evaluations conducted according to Section 840-4.17 of Title 74 of the Oklahoma Statutes;
- (3) met the minimum requirements for the position; ~~and~~
- (4) ~~passed any entrance examination required for the applicable job family level by the Office of Personnel Management.~~

(b) **Direct conversion.** Direct conversion means the conversion of an employee to permanent classified status immediately following the successful completion of **2** years service under the State Work Incentive Program. Conversion shall be to a job consistent with the duties assigned to the employee under the State Work Incentive Program. The conversion of employees who meet the requirements of subsection (a) to permanent classified status shall be exempt from:

- (1) the application, certification, and appointment requirements of Subchapter 9 of these rules;
- (2) the probationary period requirements of Part 3 of Subchapter 11 of these rules; and
- (3) the promotional posting requirements of Part 5 of Subchapter 11 of these rules.

(c) **Conversion following a break in service or to a different job.** If an employee completes a **2** year appointment under the State Work Incentive Program and is separated from the unclassified appointment under this program without being directly converted, the employee will be eligible for future appointment for up to **2** years following the completion of the State Work Incentive Program and eligible persons may make application for

employment directly with state agencies. Additionally, a person may be converted to a different job which is not consistent with the duties and responsibilities performed under the State Work Incentive Program appointment subject to the following conditions. Prior to appointment and conversion of a person under this authorization, the agency shall meet the internal positing requirement of Part 5 of 530:10-11 and may require a probationary period in accordance with 530:10-9-102. The following requirements must also be met:

- (1) The Administrator must certify that the person meets the current minimum qualifications for the job;
 - ~~(2) The Administrator may require the person to pass a qualifying examination before approving the appointment;~~
 - ~~(3)~~(2) The date the person enters on duty must be within 2 years after the completion of the State Work Incentive Program appointment; and
 - ~~(4)~~(3) The probationary period must be in accordance with 530:10-11-30.
- (d) **Salary upon conversion.** If there is no break in service and conversion is to a job which is consistent with the duties and responsibilities performed during the State Work Incentive Program appointment, the salary shall be fixed at the rate of pay in effect for the employee at the time of conversion. If the conversion is to a different job, or the conversion follows a break in service, the salary shall be determined in accordance with 530:10-7-3.

SUBCHAPTER 21. EMPLOYEE ASSISTANCE PROGRAMS

PART 1. GENERAL PROVISIONS

530:10-21-5. EAP records

- (a) Records and information that relate to participation by an employee or family member in the EAP *shall be confidential* except as provided in Subsection (b) of this Section [~~N~~neither the records nor the testimony of an Employee Assistance Program professional shall be subject to subpoena unless a participant poses a threat to deliberately harm the participant or others. [74:840-2.10(D)]]
- (b) EAP staff and EAP professionals may have access to EAP records within their agency as necessary to perform the duties and responsibilities of their job. EAP staff and EAP professionals may disclose confidential information relating to a participant under the following circumstances:
- (1) The participant consents in writing to the release of information;
 - (2) The participant's employing agency requests verification of an employee's appointment with an EAP professional for the purpose of granting authorized absence according to 530:10-21-7. The disclosure shall be limited to the date and time of the employee's appointment with the EAP professional;
 - (3) The EAP professional determines that the participant poses a threat to deliberately harm the participant or others [74:840-2.10(D)];
 - (4) There is *reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse, or neglect* [~~21:846(A)]~~[10:7103(A)];
 - (5) There is *reason to believe that an elderly person or incapacitated vulnerable adult is suffering from abuse, neglect, or financial exploitation* [43A:10-104(A)];
 - (6) A court of competent jurisdiction orders the inspection, release, or disclosure of confidential information.
- (c) Records and information relating to participation by an employee in the EAP *shall be maintained separate and apart from regular personnel records and shall not become part of the employee's personnel file* [74:840-2.10(D)].
- (d) Participants in the EAP shall have a right of access to their own EAP records [74:840-2.10(D)].
- (e) The provisions of this Section shall remain effective regardless of whether the participant has ceased participation in the EAP or has terminated employment with the state.

SUBCHAPTER 23. EMPLOYEE RECOGNITION

PART 1. GENERAL PROVISIONS

530:10-23-3. Employee performance recognition programs

- (a) At the discretion of the Appointing Authority, agencies may establish employee performance recognition programs to recognize individual employees or work units with exceptional job performance records or for other

significant contributions to the agency. Agencies may not request additional funding from the Legislature in order to fund employee performance recognition programs.

(b) Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, or other awards. The value of recognition awards may not exceed \$150.00 per recognized employee each fiscal year.

(c) In addition to the recognition awards as provided in Subsection (b), agencies may provide cash awards to recognize outstanding performance in the workplace by the employees of the agency. Cash awards may not exceed ~~\$250.00~~\$500.00 per recognized employee each fiscal year.

(d) The awards authorized in this Section may be presented at a formal or informal ceremony, banquet, or reception, the cost of which may be funded from monies available in the agency's operating funds. [74:4121]

APPENDIX A. PAY BAND SCHEDULE

PAY BAND	MINIMUM	MIDPOINT	MAXIMUM
A*	\$17,170	\$17,701	\$22,126
B*	\$17,170	\$18,551	\$23,189
C*	\$17,170	\$19,626	\$24,533
D*	\$17,170	\$21,158	\$26,448
E	\$17,456	\$23,275	\$29,094
F	\$19,202	\$25,602	\$32,003
G	\$21,122	\$28,163	\$35,204
H	\$23,234	\$30,979	\$38,724
I	\$25,730	\$34,307	\$42,884
J	\$28,288	\$37,717	\$47,146
K	\$30,920	\$41,227	\$51,534
L	\$34,012	\$45,349	\$56,686
M	\$37,752	\$50,336	\$62,920
N	\$41,906	\$55,874	\$69,843
O	\$46,934	\$62,578	\$78,223
P	\$53,036	\$70,714	\$88,393
Q	\$59,930	\$79,907	\$99,884
R	\$67,721	\$90,295	\$112,869